

ESTTA Tracking number: **ESTTA1009168**

Filing date: **10/16/2019**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

## Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

### Opposer Information

Name	America In Harms Way DBA Keep America Great!
Granted to Date of previous extension	10/16/2019
Address	7528 STATE ROUTE 41 HOMER, NY 13077 UNITED STATES

Attorney information	JAY R YABLON LAW OFFICE OF JAY R YABLON 910 NORTHUMBERLAND DRIVE SCHENECTADY, NY 12309-2814 UNITED STATES jyablon@nycap.rr.com 518-377-6737
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### Applicant Information

Application No	87305582	Publication date	06/18/2019
Opposition Filing Date	10/16/2019	Opposition Period Ends	10/16/2019
Applicant	Donald J. Trump for President, Inc. 725 Fifth Avenue New York, NY 10022 UNITED STATES		

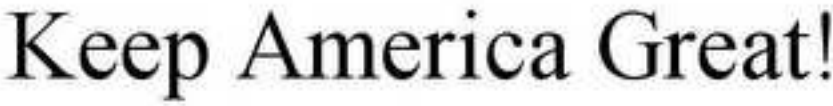
### Goods/Services Affected by Opposition

Class 025. First Use: 0 First Use In Commerce: 0 All goods and services in the class are opposed, namely: Clothing, namely, sweatshirts, T-shirts, tank tops, long sleeve shirts; headwear, namely, caps and hats; baby clothing, namely, one piece garments; children's clothing, namely, t-shirts
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### Grounds for Opposition

Priority and likelihood of confusion	Trademark Act Section 2(d)
No use of mark in commerce before application or amendment to allege use was filed	Trademark Act Sections 1(a) and (c)
No bona fide intent to use mark in commerce for identified goods or services	Trademark Act Section 1(b)
Failure to function as a mark	Trademark Act Sections 1, 2 and 45

## Mark Cited by Opposer as Basis for Opposition

U.S. Application No.	87315890	Application Date	01/27/2017
Registration Date	NONE	Foreign Priority Date	NONE
Word Mark	KEEP AMERICA GREAT!		
Design Mark			
Description of Mark	NONE		
Goods/Services	<p>Class 014. First use: First Use: 0 First Use In Commerce: 0 Lapel pins; Lapel pins for patriotic display; Lapel pins for political expression; Lapel pins for political campaigns</p> <p>Class 016. First use: First Use: 0 First Use In Commerce: 0 Coasters made of paper; Coasters of cardboard; Coasters of paper; Decals; Handkerchiefs of paper; Labels of paper or cardboard; Packaging boxes of cardboard; Packaging boxes of paper; Packaging containers comprised of paperboard for food and beverages; Packaging containers of paper; Stickers; Toilet paper; Towels of paper; Adhesive-backed letters and numbers for use in making messages displayed on motor vehicles; Advertising signs of cardboard; Advertising signs of paper; Boxes, cartons, storage containers, and packaging containers made of paper or cardboard; Boxes, containers, and cartons of paperboard or cardboard for commercial or industrial packaging; Bumper stickers; Cardboard packaging; Cardboard packaging boxes in collapsible form; Cardboard packaging boxes in made-up form; Face towels of paper; Hand towels of paper; Magnetic bumper stickers; Merchandise bags; Padded paper envelopes for mailing or packaging; Paper emblems; Paper flags; Paper labels; Paper letters and numbers for use in making messages displayed on motor vehicles; Paper towels; Paper envelopes for packaging; Paper for wrapping and packaging; Paper handtowels; Paper lunch bags; Plastic bags for packaging; Plastic or paper bags for merchandise packaging; Printed emblems; Printed matter, namely, paper signs, books, manuals, curricula, newsletters, informational cards and brochures all in the field of political education and containing historical quotes, writing, drawings, paintings, photographs, lithographs of revolution era political and military figures, namely, John Paul Jones, Ben Franklin, Thomas Jefferson, John Adams; Printed material, namely, pamphlets, brochures, manuals, books, booklets, leaflets, informational flyers, informational sheets and newsletters, adhesive backed stickers, all in the field of Political education and containing historical quotes, writing, drawings, paintings, photographs, lithographs of revolution era political and military figures, namely, John Paul Jones, Ben Franklin, Thomas Jefferson, John Adams, and kits comprised solely of one or more of the foregoing materials; Printed paper labels; Printed paper signs; Printed paper signs featuring historical quotes, writing, drawings, paintings, photographs, lithographs of revolution era political and military figures, namely, John Paul Jones, Ben Franklin, Thomas Jefferson, John Adams for use in political education; Vehicle tire lettering stickers; Decorative decals, stickers and banners featuring painted letter-</p>		

	<p>ing for storefront windows; Decals, stickers, embossed paper and printed emblems and stickers, decals, and banners featuring painted lettering; Stickers and decals for toolboxes; posters; pens; handkerchiefs of paper</p> <p>Class 025. First use: First Use: 0 First Use In Commerce: 0</p> <p>Bikinis; Boots; Boots for motorcycling; Boots for sport; Boxer briefs; Boxer shorts; Bras; Briefs; Cap peaks; Cap visors; Caps being headwear; Caps with visors; Fleece bottoms; Fleece pullovers; Fleece shorts; Fleece tops; Fleece vests; Footwear; Footwear for men and women; Footwear for track and field athletics; Footwear for women; Footwear made of vinyl; Footwear made of wood; Footwear not for sports; Footwear, namely, pumps; Footwear, namely, rubbers; Footwear, namely, work boots; Gloves; Gloves as clothing; Gloves for apparel; Gloves for personal hand conditioning use; Gloves including those made of skin, hide or fur; Hats; Hats for infants, babies, toddlers and children; Headbands; Headbands against sweating; Headbands for clothing; Heels; Helmet liners being headwear; Leggings; Mittens; Panties; Panties, shorts and briefs; Ponchos; Raincoats; Sandals; Sandals and beach shoes; Scarfs; Scarves; Shoes; Short petticoats; Short sets; Short trousers; Short-sleeve shirts; Short-sleeved or long-sleeved t-shirts; Shortsleeved shirts; Shorts; Ski gloves; Ski jackets; Ski pants; Ski suits; Ski suits for competition; Ski trousers; Ski wear; Skiing shoes; Slipper socks; Slippers; Sneakers; Socks; Socks and stockings; Sweaters; Sweatshirts; T-shirts; Tank-tops; Tank tops; Thong beachwear; Thong underwear; Ties; Tube tops; Undergarments; Vests; Adhesive bras; Adult novelty gag clothing item, namely, socks; After ski boots; Anglers' shoes; Ankle boots; Ankle socks; Anklets; Anti-perspirant socks; Apparel for dancers, namely, tee shirts, sweatshirts, pants, leggings, shorts and jackets; Aqua shoes; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Athletic footwear; Athletic shoes; Athletic shorts; Athletic sweaters; Athletic apparel, namely, shirts, pants, jackets, footwear, hats and caps, athletic uniforms; Baby bibs not of paper; Ballet shoes; Baseball caps; Baseball caps and hats; Baseball shoes; Basketball sneakers; Bath sandals; Bathing caps; Beach footwear; Beach shoes; Bermuda shorts; Bib shorts; Bicycle gloves; Bicycling gloves; Board shorts; Boat shoes; Bow ties; Bowling shoes; Boxing shoes; Boxing shorts; Business wear, namely, suits, jackets, trousers, blazers, blouses, shirts, skirts, dresses and footwear; Camouflage gloves; Camouflage vests; Canvas shoes; Chappals; Chef hats; Climbing boots; Climbing footwear; Climbing shoes; Clothing for athletic use, namely, padded shorts; Crew neck sweaters; Cross-country gloves; Cross-country mittens; Cycling caps; Cycling shoes; Cycling shorts; Cycling bib shorts; Dance shoes; Deck-shoes; Drivers; Driving gloves; Esparto shoes or sandals; Fashion hats; Fight shorts for mixed martial arts or grappling; Fingerless gloves; Fishing vests; Fitted swimming costumes with bra cups; Flip flops; Football boots; Football boots and studs therefor; Football shoes; Golf caps; Golf shoes; Golf shorts; Graphic T-shirts; Gym boots; Gym shorts; Gymnastic shoes; Half-boots; Handball shoes; Head scarves; Headwear, namely, baseball style caps, visors, painters hats, earmuffs, headbands, scarfs, cowboy style hats and headwear, ski caps, hats; Hiking boots; Hockey shoes; Hooded sweatshirts; Hunting boots; Hunting vests; Infants' shoes and boots; Jackets and socks; Japanese style socks (tabi); Keffiyehs (Yashmaghs); Kerchiefs; Knitted gloves; Lace boots; Ladies' boots; Leather boots; Leather hats; Leather shoes; Leather slippers; Leather vests; Leisure shoes; Long sleeved vests; Mantillas; Maternity bras; Men's socks; Men's and women's jackets, coats, trousers, vests; Men's dress socks; Mock turtle-neck sweaters; Moisture-wicking sports bras; Motorcycle gloves; Motorcyclist boots; Mountaineering boots; Mountaineering shoes; Mules; Neck scarfs; Neck scarves; Neckerchiefs; Neckerchieves; Non-slip socks; Outdoor gloves; Outdoor mittens; Outerwear, namely, T-shirts, sweatshirts, tank tops, tube tops, sweaters, vests, windbreakers, fleece pullovers, raincoats, ponchos, bikinis, shorts, leggings; Pedicure sandals; Platform shoes; Pocket kerchiefs; Pocket squares; Pumps; Rain boots; Rain hats; Riding boots; Riding gloves; Riding shoes; Rubber shoes; Rugby shoes; Rugby shorts; Running shoes; Scrimmage</p>
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	<p>vests;Shirts and short-sleeved shirts; Shoulder scarves; Silk scarves; Ski boots; Skiand snowboard shoes and parts thereof; Skiing shoes; Sliding shorts; Snow boots; Snowboard boots; Snowboard gloves; Snowboard mittens; Soccer boots; Soccer shoes; Spats; Sports bra; Sports bras; Sports shoes; Sports vests; Sports caps and hats; Sports shirts with short sleeves; Stiletto heels; Strapless bras; Studs for football boots; Sweat bands; Sweat shorts; Sweat-absorbent socks; Swim caps; Swimming caps; Tap shoes; Tennis shoes; Thermal socks; Thong footwear; Thong sandals; Toboggan hats, pants and caps; Top hats; Track and field shoes; Training shoes; Trekking boots; Triathlon clothing,namely, triathlon tights, triathlon shorts, triathlon singlets, triathlon shirts, triathlon suits; Trouser socks; Turtleneck sweaters; Underwear, namely, boy shorts; V-neck sweaters; Volleyball shoes; Waist belts; Walking shorts; Water socks; Water proof boots; Water repelling boots; Water repelling leather boots; Water repelling leather shoes and boots; Waterproof footwear; Waterproof leather boots; Waterproof leather shoes; Waterproof leather shoes and boots; Wet suit gloves; Wet suits for water-skiing; Wet suits for water-skiing and sub-aqua; Wetsuits for water-skiing; Wind vests; Wind-resistant vests; Winter boots; Women's hatsand hoods; Women's shoes; Women's shoes, namely, foldable flats; Women's athletic tops with built-in bras; Wooden shoes; Woollen socks; Work shoes and boots; Wrist bands; handkerchiefs; cowboy hats; earmuffs</p> <p>Class 026. First use: First Use: 0 First Use In Commerce: 0</p> <p>Buckles for clothing; Campaign buttons;Patches for clothing made of rubber, plastic and vinyl; Appliques; Arm bands; Belt buckles; Cloth patches for clothing;Clothing buckles; Embroidered patches for clothing; Fabric appliques; Hair bands; Ornamental adhesive patches for jackets; Ornamental cloth patches; Ornamental novelty badges; Ornamental novelty badges for patriotic display; Ornamental novelty badges for political expression; Ornamental novelty badges for political campaigns; Buttons; Buttons for patriotic display; Buttons for political expression; Buttons for political campaigns</p> <p>Class 035. First use: First Use: 0 First Use In Commerce: 0</p> <p>Political consultancy; Political party services, namely, promoting the interests of a political organization; Advertising, promotion and marketing services in the nature of e-mail blast campaigns forothers; Providing political informationabout elections; Providing political information, news, and commentary in the field of election campaigns; Providing a website featuring information about political issues; Providing advertising, marketing and promotional services, namely,development of advertising campaigns provided through cable television broadcast, web casts, radio broadcasts, newspapers, magazines, online banners, outdoor billboards, wild postings, bus and subwayads; Providing an internet website featuring news and information in the field of national and international politics; Providing an on-line searchable databasefeaturing political information on election campaigns; Providing information regarding political issues, knowing how to vote and knowing how to register to vote; Providing information, news, and commentary in the field of politics; Public advocacy to promote awareness of historical quotes, writing, drawings, paintings, photographs, lithographs of revolutionera political and military figures, namely, John Paul Jones, Ben Franklin, Thomas Jefferson, John Adams; Political advocacy, namely, cable television broadcast, web casts, radio broadcasts, newspapers, magazine; Political advocacy with regard to a political campaign, namely, cable television broadcast, web casts, radio broadcasts, newspapers, magazines, online banners, outdoor billboards, wild postings, bus and subway ads; Advertising and product merchandising for others of goods and services of a political nature; Advertising and product merchandising for others of goods and services in relation to a political campaign</p> <p>Class 041. First use: First Use: 0 First Use In Commerce: 0</p> <p>Political education, namely, specify, e.g., dissemination of printed educational materials of others in the nature of historical quotes, writing, drawings, paintings, photographs, lithographs of revolution era political and military figures, namely,</p>
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	John Paul Jones, Ben Franklin, Thomas Jefferson, John Adams
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Attachments	87315890#TMSN.png( bytes ) Statement of Claims.pdf(18685 bytes )
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Signature	/Jay R. Yablon/
Name	JAY R YABLON
Date	10/16/2019

### Short and Plain Statement of Claims

1. Priority and likelihood of confusion: Opposer has evidence of opposer's use prior to any apparent use by applicant.
2. No use of mark in commerce before application or amendment to allege use was filed: Applicant did not have this mark in use before filing this 1B application, and no amendments to allege use appear to have been filed to date.
3. No bona fide intent to use mark in commerce for identified goods or services: As noted in point 2 above, applicant has not filed any amendments to allege use. Moreover, if applicant follows the pattern of applicant's earlier application 86716074 for Make America Great Again, opposer will be grievously prejudiced having to wait for three years or more until opposer's application can be removed from suspension and published for opposition. That is, it is very likely that applicant's application will simply be extended for three years then never registered as was the above-referenced Make America Great Again application, because there is no bona fide intent to use the applicant's mark in commerce for the identified goods or services. During this extended time which will total more than five years from the filing date of opposer's application, opposer will be greatly prejudiced.
4. Failure to function as a mark: The applied-for mark merely conveys an informational social, political, religious, or similar kind of message; it does not function as a trademark to indicate the source of applicant's goods and to identify and distinguish them from others. Trademark Act Sections 1, 2, 3, and 45, 15 U.S.C. §§1051-1053, 1127.
5. Although political messages previously have been registered, Exam Guide 2-17, issued after such marks had been registered, makes clear that political slogans do not function as trademarks, because they do not primarily identify the source of the goods.
6. The Exam Guide states: "The USPTO's primary reviewing court has stated that "[t]he Trademark Act is not an act to register mere words, but rather to register trademarks. Before there can be registration, there must be a trademark, and unless words have been so used they cannot qualify." The USPTO therefore does not register matter unless it functions to indicate source and distinguish the applicant's goods/services from those of others as required by the statutory definition of a trademark."
7. The Exam Guide further explains that widely-used messages fail to function as trademarks because consumers see the messages as conveying beliefs, rather than as stating the source of the products on which they are placed. Thus, the wording is informational and the products are purchased to show agreement with that wording, and not because the consumer thinks that the wording identifies the source of the goods.
8. In support of the view that KEEP AMERICA GREAT is a well-known political phrase, it is note that President Trump's advisors have announced that "Keep America Great" would be the theme of his 2020 campaign, and President Trump has in fact used that phrase repeatedly at rallies and in fundraising correspondence.

9. Especially in this case, where KEEP AMERICA GREAT is being used in a hotly contested presidential campaign, this slogan is being used by Mr. Trump to promote a view that Donald Trump is GREAT, and that America can be kept GREAT by keeping him Mr. Trump as President. If ever there was a prototypical case of a message which conveys a belief and a call to action rather than a mark which identifies source, this is the case

10. In sum, registration should be refused on the grounds that “Exam Guide 2-17 makes clear that political slogans do not function as trademarks, because they do not primarily identify the source of the goods,” and so effectively fail to function as a mark. Such a refusal should have been made consistently in applicant’s case similarly to other like-cases subject to Exam Guide 2-17. Had it been made, the present application would never have proceeded to publication. Because nobody is above the law, one would hope that the President of the United States, and his reelection campaign, are held to the same laws, rules and regulations, including Trademark Office examination practices, as are all other citizens and organizations in this country.